

**MAINE HUMAN RIGHTS COMMISSION**

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Complainant (Belfast)

v.

Respondent (Biddeford)

**I. COMPLAINANT'S CHARGE:**

Complainant, alleges that Respondent, Respondent, terminated his employment due to disability discrimination.

**II. RESPONDENT'S ANSWER:**

Respondent did not formally respond to the charge. Dispatcher, who made the termination decision, stated that she terminated Mr. Complainant's employment on July 13, 2008 because she was afraid for his safety and for the safety of the passengers in his taxi.

**III. JURISDICTIONAL DATA:**

- 1) Date of alleged discrimination: July 13, 2008.
- 2) Date complaint filed with the Maine Human Rights Commission: August 5, 2008.
- 3) Respondent Respondent has an unknown number of employees. Respondent is subject to the Maine Human Rights Act (MHRA), is assumed to be subject to the federal Americans with Disabilities Act, as well as state and federal employment regulations.
- 4) The parties are not represented by counsel.
- 5) Investigative methods used: Review of the complaint, interviews with Complainant and Dispatcher.

#### **IV. DEVELOPMENT OF FACTS:**

- 1) The parties and issues in this case are as follows:
  - a) Respondent, Respondent, provided taxi service in the Saco/Biddeford area. Dispatcher is the dispatcher.
  - b) Complainant, was as a taxi driver for Respondent from November 2006 to July 13, 2008, when he was terminated by Dispatcher.
  - c) Dispatcher states that she terminated Mr. Complainant because she was afraid for his safety and for the safety of the passengers in his taxi. Mr. Complainant states that he was terminated due to his disability.
- 2) Complainant provided the following:
  - a) In 18 months of employment, he did not receive a single write-up.
  - b) During his employment, he was out of work for a month due to a heart attack, and again for another week due to his heart disease. He returned to work, without restrictions, both times. After he took time off for his heart disease, his hours kept going down. Dispatcher didn't like it that he occasionally had to leave work early because of his heart condition.
  - c) On July 10, 2008, while he was working, he got a pain in his chest and felt ill. He drove the taxi to the office and gave the keys to Dispatcher. He told Dispatcher how he was feeling and she asked if he needed a ride to the hospital. He thanked her and said no, he would head up there himself.
  - d) He was treated at the hospital for chest pains and kept overnight for tests and observation for a possible heart attack. All tests were negative and he was discharged the following day.
  - e) His cardiologist wrote a letter clearing him to return to work, stating that he did not have a heart attack.
  - f) On July 13, 2008, he went to the office to pick up his paycheck. Dispatcher was there, and told him that she had to let him go because he might be a liability. Dispatcher did not even ask to see his doctor's note.
- 3) The doctor's letter (undated) reads: "Mr. Complainant was evaluated in our office today by [doctor]. He has not had an acute heart event and may return to work without restrictions."
- 4) Dispatcher provided the following:

- a) Mr. Complainant was a very good employee, but he was sick often. He was out of work for almost a month and in the hospital for heart surgery. He was out of work for over a week on another occasion.
- b) At least five or six times, every two or three weeks, Mr. Complainant told her that he was having, or felt like he was having, a heart attack.
- c) Mr. Complainant worked long (12 hour) shifts. She cut him back to four days a week because she was concerned that working so many hours was bad for his health. She couldn't cut his hours any further because if she did, she would have to hire someone else and then she would have too many employees.
- d) She decided to terminate Complainant's employment on July 13, 2008 because she was afraid for his safety and for the safety of the passengers in his taxi.

## **V. ANALYSIS:**

- 1) The Maine Human Rights Act requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) Complainant alleges that Respondent terminated his employment because of his disability (heart condition). Respondent states that Complainant was terminated because Dispatcher was afraid for his safety and for the safety of the passengers in his taxi.
- 3) The Maine Human Rights Act prohibits an employer from discharging an employee on the basis of "physical or mental disability." 5 M.R.S.A. § 4572(1)(A).
- 4) Heart disease is a disability under the Act. 5 M.R.S.A. § 4553-A(1)(B). A protected disability also includes a physical or mental impairment that substantially limits one or more of a person's major life activities or significantly impairs physical or mental health. 5 M.R.S.A. § 4553-A(1)(A)(1 & 2). An employee is also protected if his employer regards him as having or being likely to develop a disability. *See* 5 M.R.S.A. § 4553-A(1)(D).
- 5) The Act does not prohibit an employer from discharging an individual with a physical or mental disability when the employer can show that the employee or applicant, "because of the physical or mental disability, is unable to perform the duties or to perform the duties in a manner that would not endanger the health or safety of the individual or others. . . ." 5 M.R.S.A. § 4573-A(1-B) (emphasis added).
- 6) The defense requires an individualized assessment of the relationship between an employee or job applicant's physical or mental disability and the specific legitimate requirements of the job. *See Higgins v. Maine C. R. Co.*, 471 A.2d 288, 290 (Me. 1984); *Maine Human Rights Com. v. Canadian Pacific, Ltd.*, 458 A.2d 1225, 1234 (Me. 1983). The defense imposes upon the employer the burden of establishing that it had a factual basis to believe that, to a

reasonable probability, the employee or job applicant's physical or mental disability renders him or her unable to perform the duties or to perform them in a manner that would not endanger the health or safety of the employee or job applicant or others. *See Canadian Pacific, Ltd.*, 458 A.2d at 1234. An employer cannot deny an employee or applicant an equal opportunity to obtain gainful employment on the mere possibility that a physical or mental disability might endanger health or safety. *See Id.*

- 7) Here, Complainant, has heart disease, which is a disability under the Maine Human Rights Act. Respondent terminated him because Dispatcher feared that because of Mr. Complainant's heart disease, it was unsafe for him and his passengers for him to drive a taxi.
- 8) Respondent is liable for disability discrimination against Mr. Complainant because it did not perform an individualized assessment of the relationship between Mr. Complainant's heart disease and his ability to drive safely. Respondent did not, for example, send Mr. Complainant for a fitness for duty examination by a qualified doctor, and no doctor found that Mr. Complainant's heart disease rendered him unable to drive a taxi in a manner that would not endanger the health or safety of Mr. Complainant or the company's passengers. On the contrary, Mr. Complainant's doctor released him to return to work without restrictions.
- 9) As such, Dispatcher denied Mr. Complainant an equal employment opportunity on the mere possibility that his heart disease might endanger health or safety.

#### **VI. RECOMMENDATION:**

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 1) There are **Reasonable Grounds** to believe that the Respondent, unlawfully discharged Complainant, on the basis of disability; and
- 2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

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Patricia E. Ryan, Executive Director

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Barbara Lelli, Chief Investigator